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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/706,508	11/03/2000	Michael Schwartz	JUR-PT001	6522
3624	7590	07/30/2004	EXAMINER	
VOLPE AND KOENIG, P.C. UNITED PLAZA, SUITE 1600 30 SOUTH 17TH STREET PHILADELPHIA, PA 19103			TRAN, TUAN A	
			ART UNIT	PAPER NUMBER
			2682	7

DATE MAILED: 07/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/706,508

Applicant(s)

SCHWARTZ ET AL.

Examiner

Tuan A Tran

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 18 May 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-23,25-28 and 38-49 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-23,25-28 and 38-49 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 1, 4-5, 11, 13, 15-17, 21 and 23 are rejected under 35 U.S.C. 102(b) as being anticipated by Edmonds (GB 2214740).

Regarding claims 17, 21 and 23, Edmonds discloses a portable radio receiver distributed for individuals for receiving a preexisting public available broadcast (See fig. 3 and Abstract), the radio comprising: a receiver for receiving only the preexisting public available broadcast, the receiver is fixedly set to receive the preexisting public available broadcast; and a speaker for producing audio signals of the received preexisting public available broadcast (See fig. 3 and abstract, pages 1-2).

Claim 11 is rejected for the same reasons as set forth in claims 17, 21 and 23.

Claims 1 and 4 are rejected for the same reasons as set forth in claims 17, 21 and 23, as method.

Regarding claim 5, Edmonds discloses as cited in claim 1. Edmonds further discloses the step of preventing an individual being distributed the portable radio receiver from resetting the radio to another broadcast (See page 2).

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Regarding claim 13 and 15-16, Edmonds discloses as cited in claim 11.

Edmonds further discloses the radio receiver comprises a variable tuner which is set to the frequency of the preexisting public available broadcast during manufacture and an input, wherein the input is a female adapter, to allow a received frequency of the radio to be changed (See page 1 paragraph 4-6).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 2-3, 6-9, 12, 18-20 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Edmonds (GB 2214740).

Regarding claims 18-19, Edmonds discloses as cited in claim 17. However, Edmonds does not mention that the radio receiver comprises indicia of the preexisting public available broadcast or an advertiser/sponsor of the preexisting public available broadcast. Displaying indicia of the preexisting public available broadcast or an advertiser/sponsor of the preexisting public available broadcast on the device is a well known graphical presentation technique such as all Disney TV broadcast programs or products having Disney logo or handheld/car radios displaying radio station channel: FM 107.3, FM 104.1, AM 1500 ... etc. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have included indicia of the

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preexisting public available broadcast or an advertiser/sponsor of the preexisting public available broadcast on the device for the advantage of allowing the advertiser/sponsor to sell their names to the customers for commercial purposes.

Claim 12 is rejected for the same reasons as set forth in claim 18-19.

Claims 3 and 8-9 are rejected for the same reasons as set forth in claim 18-19, as method.

Regarding claims 20 and 25, Edmonds discloses as cited in claim 17. However, Edmonds does not mention that the device comprises timer switch for preventing operation of the communication device during time periods other than the associated broadcast time period. Since the broadcast has an associated broadcast time period is common in the art; therefore it is a common sense for person skilled in the art to add the timer switch to the device to operate the device only during the broadcast time period in order to prolong battery life to save cost and time because battery power is a limited power resource.

Claim 2 is rejected for the same reasons as set forth in claims 20 and 25, as method.

Regarding claims 6-7, Edmonds discloses as cited in claim 1. However, Edmonds does not mention that the preexisting public available broadcast is associated with an event and the radio receivers are distributed along with tickets of the event and upon entry to the event. Since Edmonds teaches the radio receivers are distributed to the individuals free or at subsidized charge (See Abstract); therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to distribute

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the radio receivers along with tickets of the event associated with the preexisting public available broadcast and upon entry to the event for the advantage of enlarging audiences.

3. Claims 10, 14, 22 and 26-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Edmonds (GB 2214740) in view of Avnet et al. (2002/0094787).

Regarding claim 22 and 26-28, Edmonds discloses as cited in claim 17.

However, Edmonds does not mention that the preexisting public available broadcast in a digital format, the radio receiver is a digital radio receiver and comprises On/Off button, volume control button, and rechargeable battery. Avnet suggests a portable (hand held) communication device 16, associated with a predetermined broadcast of a predetermined information delivery system 18 wherein the predetermined broadcast is in digital format (See fig. 1 and Abstract, page 2 [0015], page 3 [0023], [0025]), such as PDA, cell phone, computer or other specialized receiving device which is capable of downloading the information from and otherwise interacting with the information delivery system, the device inherently comprising On/Off button, volume control button and rechargeable battery. Since both Edmonds and Avnet teach about devices for receiving only a predetermined broadcast; therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to follow Avnet's suggestions in modifying the system as disclosed by Edmonds by using PDA, cell phone, computer or other specialized receiving device as digital radio receiver to receive digital broadcast

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for the advantage of expanding the capability of the system to various types of broadcast formats and receiving devices in order to enhance the quality of the broadcast as well as accommodate the user's intentions.

Claim 14 is rejected for the same reasons as set forth in claim 28.

Regarding claim 10, Edmonds discloses as cited in claim 1. However, Edmonds does not mention the steps of: each portable communication device transmitting a signal when operating; and receiving the use signals for the operating communication devices to determine a number of the operating units. Avnet teaches a portable (hand held) bi-directional communication device 16 associated with a predetermined broadcast of a predetermined information delivery system 18 wherein each portable communication device transmitting a use signal when operating; and the delivery system receives the use signals for the operating communication devices to determine a number of the operating units (See page 2 [0012]). It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teachings of Avnet in modifying the system as disclosed by Edmonds for the advantage of recording the number of audiences for the purpose of advertisement analysis.

4. Claims 38 and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hahn et al. (6,230,029).

Regarding claim 38, Hahn discloses a communication device (See fig. 3) comprising: a speaker 24 configured to direct sounds towards an ear canal of a listener's ear and a module 24 configured to fit to the listener's ear; a housing

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connected to the speaker module 24, the housing configured to be substantially supported by a pinna of the listener's ear and containing substantially all other components of the communication device other than the speaker (See figs. 3 and col. 2 lines 45-50, col. 5 lines 43-57). However, Hahn does not mention that the speaker module configured to fit substantially in a concha portion of the listener's ear. Since the speaker module of a headset having a size that can be fitted in a concha portion of the listener's ear is very common in the art; therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to configure the speaker module as disclosed by Hahn with the size that can be fitted in the concha portion of the ear for the advantage of allowing greater customization in the fitting of the headset module to the user's ear

Regarding claim 40, Hahn discloses as cited in claim 38. Hahn further discloses the all other components comprises a tuned frequency of the tuner 30 is adjustable by a listener and inherently a variable frequency tuner (See fig. 10).

5. Claims 38-39 and 42-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Edmonds (GB 2214740) in view of Hahn et al. (6,230,029).

Regarding claims 38-39, Edmonds discloses a portable radio receiver distributed for individuals for receiving a preexisting public available broadcast (See fig. 3 and Abstract), the radio comprising: a receiver for receiving only the preexisting public available broadcast, the receiver is fixedly set to receive the preexisting public available broadcast; and a speaker for producing audio signals of the received preexisting public



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available broadcast (See fig. 3 and abstract, pages 1-2). However, Edmonds does not mention that the portable radio receiver comprises: a speaker configured to direct sounds towards an ear canal of a listener's ear and a component configured to fit substantially in a concha portion of to listener's ear; a housing connected to the component, the housing configured to be substantially supported by a pinna of the listener's ear and containing substantially all other components of the communication device other than the speaker. Since Hahn teaches a wireless transceiver headset (See fig. 3) comprising: a speaker 24 configured to direct sounds towards an ear canal of a listener's ear and a module 24 configured to fit to the listener's ear; a housing connected to the speaker module 24, the housing configured to be substantially supported by a pinna of the listener's ear and containing substantially all other components of the communication device other than the speaker (See figs. 3 and col. 2 lines 45-50, col. 5 lines 43-57) and the speaker module of a headset having a size that can be fitted in a concha portion of the listener's ear is very common in the art; therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to replace a hand held wireless communication device with a wearable wireless communication device for the advantage of giving the user higher degree of freedom (hand free) as well as to configure the speaker module as disclosed by Hahn with the size that can be fitted in the concha portion of the ear for the advantage of allowing greater customization in the fitting of the headset module to the user's ear.

Regarding claims 42-44, Edmonds & Hahn discloses as cited in claims 38-39.

However, they do not mention that the device comprises indicia of the preexisting public

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available broadcast or an advertiser/sponsor of the preexisting public available broadcast. Displaying indicia of the preexisting public available broadcast or an advertiser/sponsor of the preexisting public available broadcast on the device is a well known graphical presentation technique such as all Disney TV broadcast programs or products having Disney logo or handheld/car radios displaying radio station channel: FM 107.3, FM 104.1, AM 1500 ... etc. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have included indicia of the preexisting public available broadcast or an advertiser/sponsor of the preexisting public available broadcast on the device for the advantage of allowing the advertiser/sponsor to sell their names to the customers for commercial purposes.

6. Claims 41 and 45-49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Edmonds (GB 2214740) in view of Hahn et al. (6,230,029) as applied to claim 38 above, and further in view of Avnet et al. (2002/0094787).

Regarding claims 41 and 45-48, Edmonds & Hahn disclose as cited in claim 38. However, they do not mention that the communication device is a digital recording player comprising: a digital audio processor, a memory (ROM and RAM) and an input for receiving, storing and producing an audio signal of a digital recording. Avnet suggests a portable (hand held) communication device 16, associated with a predetermined broadcast of a predetermined information delivery system 18 wherein the communication device is a digital recording player inherently comprising: a digital audio processor, a memory (ROM and RAM) and an input for receiving, storing and

producing an audio signal of a digital recording (See page 2 and page 3 [0023-0024]).

Since both Edmonds & Hahn and Avnet teach about devices for receiving only a predetermined broadcast; therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to follow Avnet's suggestions in modifying the device as disclosed by Edmonds & Hahn for the advantage of expanding the capability of the system to various additional operational functions such as playback in order to accommodate the user's intentions.

Regarding claim 49, Edmonds & Hahn & Avnet disclose as cited in claim 45. Avnet further discloses an indicia is associated with the digital recording (See page 1 [0008]).

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- Marx (6,510,230).

### ***Response to Arguments***

Applicant's arguments with respect to claims 1-23, 25-28 and 38-49 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

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Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Tuan Tran** whose telephone number is **(703) 605-4255**.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Vivian Chin**, can be reached at **(703) 308-6739**.

**Any response to this action should be mailed to:**

Commissioner of Patents and Trademarks

Washington, D.C. 20231

**or faxed to:**

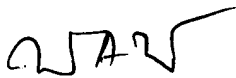
**(703) 872-9314 (for Technology Center 2600 only)**

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Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington, VA, Sixth Floor (Receptionist).

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Technology Center 2600 Customer Service Office whose telephone number is (703) 306-0377.



Tuan Tran

AU 2682



VIVIAN CHIN  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2600

7/26/04